LEGISLATIVE CONTROL OVER MUNICIPAL CORPORATIONS.—"It is, perhaps, impossible to define with precision what limitations exist upon the power of the Legislature over municipal corporations." Dillon on Mun. Corp., 4th Ed. (1890), Ch. IV, § 68. The case of *People ex rel. Rodgers* v. *Coler* (see RECENT DECISIONS) is an important one in this connection. It decides that the New York Legislature cannot compel a municipal corporation to pay laborers on public work the "prevailing rate of wages," and to stipulate in contracts for public work that all laborers employed thereon shall receive wages at the said rate—higher than that which might otherwise be agreed upon, thus raising the cost of the work to the corporation. The decision is based (1) on Art. VIII, § 10, of the State Constitution, which provides that no county, city, town or village shall be allowed to incur indebtedness except for county, city, town or village purposes; and (2) on the broad theory that the Legislature cannot interfere by compulsory laws with the "private" concerns of municipal corporations.

The first ground of the decision seems sound. All municipal contracts and disbursements render taxation necessary. *Weismer* v. *Village of Douglas*, 64 N. Y., 91 (1876). So the right of a city to contract and spend must be limited by the right to tax, which can only be exercised for a public purpose, whether by the State or some subordinate part thereof. *Loan Assn.* v. *Topeka*, 20 Wall., 655, 660 (1874). Hence every "city purpose" must also be a public purpose. *Sun Publishing Assn.* v. *Mayor*, 152 N. Y., 257, 265 (1897), HAIGHT, J.; 8 App. Div., 230, 235, 269, BARRETT and INGRAHAM, J. J. The question, therefore, in *People* v. *Coler*, under Art. VIII, § 10, was whether the advantage of a particular class of workmen was a public purpose justifying taxation. The court decided that it was not. PARKER, C. J., and HAIGHT, J., dissenting, cited *Mayor* v. *Tenth National Bank*, 111 N. Y. 446 (1888), which held that the Legislature could make the city repay money advanced to it in time of emergency, which money the city did not legally owe. That case followed *Guilford* v. *Supervisors*, 13 N. Y., 143 (1855), which allowed the Legislature to tax a town to pay the claim of an official who had failed to recover the sum in a prior action. Yet, except in cases like *Guilford* v. *Supervisors*, it has never been maintained that the moral sense of the Legislature should guide in ascertaining the meaning of the term "public purpose." In so far as those cases sustain such a theory, they can hardly be supported. (On Art. VIII, § 10, see *Bush* v. *Supervisors*, 159 N. Y., 212 (1899), which held that a county, though of its own accord, and with the consent of Legislature, could not be allowed to pay gratuities to soldiers in the civil war.)

The second ground of the decision in *People* v. *Coler* is the more interesting. In *Bailey* v. *Mayor*, 3 Hill, 535 (N. Y., 1842), the private functions of a city corporation were distinguished from its governmental attributes for the purpose of holding the city liable in a tort action. This is quite different from giving a city the privilege of freedom from State control, because of its private character. In *Darlington* v. *Mayor*, 31 N. Y., 164 (1865), DENIO,

C. J., attacked the distinction when turned into an argument against the validity of a statute making property of the city liable for damages suffered from riots within its limits. In *People* v. *Flagg*, 46 N. Y., 401 (1871), a municipality was compelled to issue bonds to build roads entirely within its borders. The town was not consulted in regard to this matter of local concern; and it was forced not only to pay out money, but also to contract, by issuing its bonds. In *People* v. *Batchellor*, 53 N. Y., 128 (1873), the court refused to make a town assume the relation of stockholder to a railroad corporation; and referred with approval to *Atkins* v. *Randolph*, 31 Vt., 226 (1838), which denied to the Legislature power of appointing a liquor agent for a town and of making the town liable on contracts entered into by this agent, because, though the measure was intended as a police regulation, the State could not compel the town to contract in its "private" capacity. DENIO, C. J., had disapproved of the Vermont case. In *Duanesburg* v. *Jenkins*, 57 N. Y., 177 (1874), a town was forced to issue bonds in help of a railroad, and the authority of *People* v. *Batchellor* was expressly limited to the point actually decided. In all these cases the purpose was public and so the legislation was valid in its relation to the taxing power. [As to railroads see *Bank of Rome* v. *Village of Rome*, 18 N. Y., 38 (1858).] In *Guilford* v. *Supervisors*, and *Mayor* v. *Bank*, *supra*, we have other cases which supported mandatory legislation over local concerns. Cf. also *Knaff* v. *Newton*, 1 Hun, 268 (1874). In *Webb* v. *Mayor*, 64 How. Pr., 10 (Sup. Ct., 1882), it was held, that the city could not be made to tear down a reservoir without receiving due compensation. In its turn *Darlington* v. *Mayor* was expressly limited to the point actually decided. But in *Focci* v. *Mayor*, 73 Hun, 46 (1893), a mandatory act to collect from the city half the expense of freeing a street from railroad tracks was supported. The need of local consent as to a park was a point expressly not considered in *Matter Appl'n Mayor*, 99 N. Y., 569, 584 (1885), where the statute was not mandatory. The Rapid Transit Act was not mandatory (L. 1891, c. 4, § 5); but in the *Sun Publishing case*, *supra*, p. 265, HAIGHT, J., in a dictum, says of a city improvement: "It must be * * * sanctioned by its citizens." The legislation regarding Prospect Park (L. 1859, c. 466; L. 1861, c. 340, § 10), and the New York City water supply (L. 1883, c. 490, §§ 1, 16), however, was mandatory. In *People* v. *Coler*, the court cites with approval *Board of Education* v. *Blodgett*, 155 Ill., 441, 450 (1895), which held that the Legislature could not deprive a school district corporation of the benefit of the statute of limitations. This last case seems opposed to *Guilford* v. *Supervisors*. The court also approves of *People* v. *Batchellor*; and of *Park Comr's* v. *Detroit*, 28 Mich., 228 (1873), the leading case on the private character of municipalities, where it was held, per COOLEY, J., that the State could not force a city to lay out and pay for a park. The dictum of HAIGHT, J., followed by the judgment in *People* v. *Coler*, apparently commits the New York courts to JUDGE COOLEY's theory of the nature

of municipal corporations, which JUDGE DENIO opposed. The difference between the conceptions of these two judges and their respective followers is fundamental. On the one hand municipal corporations are regarded simply as agents of the State and nothing more; on the other hand they are considered as existing primarily for the benefit of the separate localities in the State, not simply for the convenience of the State as a whole. By the advocates of this latter view it is said, that, though municipal corporations have no vested rights in governmental powers as against the State, *People* v. *Morris*, 13 Wend., 325 (1835), they are also private corporations, with the rights of private corporations in regard to property and contract rights.

The State, *e. g.*, cannot force them to contract [*quaere*, issue bonds?] any more than it can compel private corporations to contract.

Nor can (*semble*) the State wholly destroy their corporate existence, if their charters, as in the case of the City of the New York, antedate the period when the State reserved to itself the right of charter amendment and repeal.

Hitherto the United States Supreme Court has refused to consider municipal corporations "private" in such a sense that obligations could not be forced on them individually without violating the "due process of law clause" in the XIVth amendment. See *Williams* v. *Egleston*, 170 U. S., 304 (1897), where a town was made to pay the cost of a bridge. It will be interesting to observe what may be held on appeal in a case like *Dunmore's Appeal*, 52 Pa. St., 374 (1866), where the Legislature was allowed to deprive a municipal corporation of the right of trial by jury.

SALES—INSTALMENT CONTRACT—EFFECT OF FAILURE TO PAY INSTALMENT OF PURCHASE-PRICE.—What kind of default by one party to an instalment contract will justify the other in refusing to perform subsequently is a subject on which courts differ. The English doctrine laid down by the House of Lords in *Mersey Steel Co.* v. *Naylor*, 9 App. Cas., 434 (1884), which was a case of a failure to pay an instalment, is that there must be an intention shown by the defaulting party to abandon the contract. In *Norrington* v. *Wright*, 115 U. S., 188 (1885), the Supreme Court declared that failure by the vendor to deliver the first instalment of goods as per contract was ground for repudiation by the vendee, though in that case the vendor had shown his intention to continue performance. This doctrine has been extended to a failure by the vendor to deliver any subsequent instalments. *Cresswell* v. *Martindale*, 63 F. R. 84 (C. C. A., 1894). It is a poor rule which does not work both ways, and, logically, it would seem that the same effect should be given to a failure on the part of the vendee to make an instalment payment. The appropriateness of such a doctrine was well pointed out in the Scotch case of *Turnbull* v. *MacLean*, 1 Session Cas., 4th Series, 730 (1874). In that case the Lord Justice Clerk said (on p.